

# INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Questions presented.....	2
Statutes involved.....	3
Statement.....	3
Argument.....	8
Conclusion.....	16
Appendix.....	17

## CITATIONS

### Cases:

<i>Alabama Power Co. v. Federal Power Commission</i> , 128 F. (2d) 280, certiorari denied, No. 229, this term, October 12, 1942.....	9, 11, 12, 13
<i>Alabama Power Co. v. McNinch</i> , 94 F. (2d) 601.....	11, 12, 16
<i>Alabama Power Co. v. Smith</i> , 10 P. U. R. (N. S.) 275.....	16
<i>American Surety Co. v. Baldwin</i> , 287 U. S. 156.....	14
<i>Buie v. United States</i> , 76 F. (2d) 848, certiorari denied, 296 U. S. 585, rehearing denied, 296 U. S. 662.....	14
<i>Clarion River Power Co. v. Smith</i> , 59 F. (2d) 861, certiorari denied, 287 U. S. 639.....	11, 16
<i>Columbia Broadcasting System, Inc. v. United States</i> , 316 U. S. 407.....	15
<i>Kansas City So. Ry. Co. v. United States</i> , 231 U. S. 423....	11
<i>National Labor Relations Board v. Mackay Radio &amp; Telegraph Co.</i> , 304 U. S. 333.....	13
<i>Norfolk &amp; Western Ry. Co. v. United States</i> , 287 U. S. 184....	11
<i>Northern States Power Co. v. Federal Power Commission</i> , 118 F. (2d) 141.....	11, 12
<i>Northwestern Electric Co. v. Federal Power Commission</i> , 125 F. (2d) 882.....	11, 13
<i>Ostler Candy Co. v. Federal Trade Commission</i> , 106 F. (2d) 962, certiorari denied, 309 U. S. 675.....	14
<i>Rochester Telephone Corp. v. United States</i> , 307 U. S. 125....	15
<i>Shields v. Utah Idaho R. Co.</i> , 305 U. S. 177.....	15
<i>Stoll v. Gottlieb</i> , 305 U. S. 165.....	14
<i>Sunshine Anthracite Coal Co. v. Adkins</i> , 310 U. S. 381.....	14
<i>Treines v. Sunshine Mining Co.</i> , 308 U. S. 66.....	14
<i>United States v. Appalachian Electric Power Co.</i> , 311 U. S. 377.....	11
<i>United States v. Los Angeles R. R.</i> , 273 U. S. 299.....	15
<i>Whiskey Cases</i> , 99 U. S. 594.....	14

## II

### Statutes:

	Page
Federal Power Act of 1935:	
Section 3 (13)-----	10, 17
4 (b)-----	9, 18
8-----	4, 18
10-----	10, 19
14-----	10, 20
16-----	10, 19
19-----	10
20-----	10, 19, 21
26-----	10
201 (a)-----	12, 22
301 (a)-----	9, 22
302-----	10, 23
304-----	15, 23
313-----	6, 8, 13
316-----	15, 23
Federal Water Power Act of June 10, 1920-----	16
Public Utility Act of 1935 (49 Stat. 838), Title II-----	16
Miscellaneous:	
S. Rep. No. 621, 74th Cong., 1st Sess., p. 53-----	11

# In the Supreme Court of the United States

OCTOBER TERM, 1942

---

No. 616

LOUISVILLE GAS AND ELECTRIC CO., PETITIONER

v.

FEDERAL POWER COMMISSION

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT*

---

BRIEF FOR THE RESPONDENT IN OPPOSITION

---

## OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals (3 R. 1460-1472)<sup>1</sup> is reported in 129 F. (2d) 126. The opinion and orders of the Commission are set forth in the record at 2 R. 963-1000, 1256-1257, and 1293-1295.

## JURISDICTION

The judgment of the Circuit Court of Appeals (3 R. 1459) was entered on June 29, 1942. A

---

<sup>1</sup> The three volumes of printed record filed with the petition in this case will be referred to as 1 R, 2 R, and 3 R, respectively.

petition for rehearing (3 R. 1473-1499) was denied on October 6, 1942 (3 R. 1499). The petition for a writ of certiorari was filed on January 4, 1943. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

#### QUESTIONS PRESENTED

Following extensive hearings, the Federal Power Commission, by opinion and two orders, determined (pursuant to sections 3 (13) and 4 (b) of the Federal Power Act) the actual legitimate original cost of petitioner's licensed hydro-electric project, disallowing certain items claimed as such cost by petitioner, and required the setting up of accounts to reflect this determination. Petitioner sought no court review of these orders, but purported to comply with them. Petitioner, however, in so doing, failed to remove the disallowed items of claimed cost from its accounts. Thereafter, the Commission ordered petitioner to show cause why the disallowed amounts should not be charged to petitioner's surplus account, and, after petitioner's response, found that no cause had been shown and entered a third order requiring petitioner to charge the disallowed amounts to surplus. On review by the court below, this order of the Commission was affirmed, the court dismissing the review of the first two orders which determined the cost of the project and required petitioner to reflect that cost in its accounts. The questions are:

1. Whether the Commission has jurisdiction to require a licensee under the Act to correct its accounts so as to reflect the Commission's cost determination by charging the disallowed items of claimed cost to surplus.

2. Whether the court below properly dismissed for lack of jurisdiction the petition for review of the Commission's first two orders with which petitioner had purported to comply.<sup>2</sup>

#### STATUTES INVOLVED

The relevant provisions of the Federal Power Act of 1935 are set forth in the Appendix, *infra*.

#### STATEMENT

On November 11, 1925, the Federal Power Commission issued a license under The Federal Water Power Act to the Louisville Hydro-Electric Company (hereafter called Hydro) for the Ohio Falls Hydroelectric Project No. 289 on the Ohio River near Louisville, Kentucky (1 R. 15-39). On October 17, 1934, the license was transferred, with the approval of the Federal Power Commission, to petitioner Louisville Gas and Electric Company (1 R. 40-45) and, by the terms of the transfer, petitioner accepted "all the provisions and conditions of the Federal Water Power Act of June 10, 1920," (*cf.* Sec. 8 of that Act.

<sup>2</sup> In the event the petition for certiorari is granted we reserve the right to urge the correctness of the Commission's cost determination.

Appendix, *infra*, p. 18) and agreed to "establish and maintain books and accounts in accordance with the prescribed system of accounts adopted by the Commission" and to "enter therein such items as may from time to time be determined by the Commission" (1 R. 41-43).

Pursuant to the provisions of The Federal Water Power Act and of the license (1 R. 23-24), Hydro, on February 10, 1930, filed with the Commission a verified statement claiming \$7,829,738.72 as the actual legitimate original cost of the project as of November 30, 1929 (1 R. 46-90). The results of an audit by the Commission staff were embodied in a preliminary accounting report (1 R. 91-162) in which it was recommended that \$6,919,681.11 of the claimed cost be allowed (1 R. 105). The items making up the \$910,057.61 balance of the claimed cost were suspended and proposed for elimination, the objections being set forth in detail opposite each questioned item (1 R. 107-137). This report was served on the licensee (1 R. 91) which filed its protest thereto and requested a hearing (1 R. 162-265). Thereupon, pursuant to the Commission's order (1 R. 266-268), a hearing before the full Commission was held on October 19-22, 1932 (1 R. 283-565). Extended testimony and numerous exhibits (1 R. 567-956) were introduced and thereafter detailed briefs were filed (2 R. 967). On October 31, 1933, the Commission rendered an opinion (2 R. 963-

1000) and entered its first order determining the actual legitimate original cost of the project (2 R. 1000-1005). In so doing the Commission found and allowed \$6,996,093.52 and disallowed \$833,645.20 of the \$7,829,738.72 claimed by the company. The amounts disallowed were held not to "represent proper and reasonable costs of construction of said project" (2 R. 1004). The order required (2 R. 1004-1005):

1. That the licensee establish and maintain control ledger sheets or accounts with reference to said project showing a total debit balance in its fixed capital accounts beginning with an entry of \$6,996,093.52 as actual legitimate original cost of said project as of November 30, 1929;

2. That the licensee establish and maintain subsidiary ledger sheets or accounts or records, showing and substantiating all entries in such control account, and classifying the total for fixed capital in appropriate detail and in accordance with the Commission's rules and regulations;

3. That the licensee comply with this order within 90 days of its service.

Prior to the expiration of the period for complying with the above order, the company applied for and received an extension of time within which to apply for a rehearing (2 R. 1005-1007). Thereafter, several applications for rehearing were filed and various postponements were granted by the Commission (2 R. 1008-1016, 1016-

1018, 1087-1088, 1112-1119, 1123, 1124-1131). Finally, a rehearing on certain of the disallowed items was set by Commission order of December 15, 1936, more than 3 years after the original cost order (2 R. 1135-1136). Following the rehearing on January 6, 1937 (2 R. 1137-1221) the Commission, on the basis of the additional testimony, various statements filed by the licensee, and briefs of counsel, entered a second order on September 30, 1937 (2 R. 1256-1259, see also 3 R. 1461), allowing an additional amount of \$208,879.33 as part of actual legitimate original cost together with \$13,215.82 for interest during construction. Thus, of the total amount claimed by the company, \$7,218,188.67 was allowed and \$611,550.05 was disallowed. The company was ordered to conform its books of accounts accordingly (2 R. 1257).

Petitioner did not apply under Section 313 of the Federal Power Act for a rehearing of this order, nor did it seek a court review of the 1933 order as modified by the 1937 order. Instead, petitioner undertook, on September 12, 1938, to comply with the Commission's orders by making "the journal entries to adjust [its] books in accordance with the Commission's orders of October 31, 1933 and September 30, 1937" (2 R. 1260). On the same date, petitioner transmitted to the respondent F. P. C. Form No. 76 (2 R. 1261-1269) showing "the adjusting journal entries made by licensee in order to comply with requirement that the licensee's books of account be



brought into agreement with actual legitimate original cost of project plant as determined by the Commission" (2 R. 1265).

Of the \$611,550.05 which had been disallowed, \$9,576.48 pertained to nonproject property and in the Commission's view was properly transferred by petitioner to the appropriate nonproject account (2 R. 1266). The \$601,973.57 balance did not pertain to any nonproject property and therefore could not be transferred to any nonproject account. However, petitioner failed to remove that amount from its accounts (2 R. 1265-1267).

Accordingly, on April 4, 1939, the Commission ordered petitioner to show cause why the \$601,973.57 should not be "transferred as a charge against the company's appropriate surplus account in accordance with the Commission's orders of October 31, 1933, and September 30, 1937, and the provisions of the Uniform System of Accounts prescribed for public utilities and licensees" (2 R. 1270-1272). After applying for and receiving an extension of time (2 R. 1273-1278), petitioner filed a detailed response to the order to show cause (2 R. 1279-1292) in which petitioner set forth numerous legal arguments, but failed to proffer or indicate any accounting or other testimony as to the disposition of the disallowed items. No request or suggestion for a further hearing was made.

On October 31, 1939, the Commission entered its third dispositive order (2 R. 1293-1295) finding

that no cause had been shown and requiring petitioner to charge the \$601,973.57 against its earned surplus account. On December 4, 1939, petitioner filed a petition for rehearing (2 R. 1295-1330) which was automatically denied under Section 313 (a) of the Act when the Commission failed to act upon it within thirty days.

Thereupon, pursuant to Section 313 (b) of the Act, petitioner filed a petition for review in the court below (3 R. 1337-1427). The Commission moved to dismiss the review of the 1933 order as amended by the 1937 order because petitioner had not applied for rehearing or sought a timely court review under Section 313 of the Act as to those orders (3 R. 1455-1458). This motion was passed until the hearing of the case on the merits (3 R. 1459).

After the hearing, the court below dismissed the petition insofar as it sought review of the 1933 order as amended by the 1937 order and held that the accounting disposition of the disallowed items made by the Commission was in all respects proper. Accordingly, a judgment affirming the 1939 order of the Commission was entered on June 29, 1942 (3 R. 1459). A petition for rehearing (3 R. 1473-1499) was denied on October 6, 1942 (3 R. 1499).

#### ARGUMENT

Petitioner contends (Pet. 20-34) that the court below erred in affirming the Commission's juris-

diction to prescribe the accounting disposition to be made of the disallowed items of claimed cost. Petitioner further contends (Pet. 35-46) that the court below erred in dismissing the petition for review of the Commission's 1933 order as modified by the 1937 order which determined the actual legitimate original cost of the project and required petitioner to set up its accounts accordingly. These contentions are without merit.

1. Petitioner's contention that the Commission was without jurisdiction to enter such accounting order on the ground that its accounts were subject to regulation by the states, and federal regulation is limited to those matters which are not subject to state regulation (Pet. 21-34) is plainly without substance. The Act clearly contemplates that the accounting requirements prescribed by the Commission shall exist side by side with state requirements for keeping accounts. *Cf. Alabama Power Co. v. Federal Power Commission*, 128 F. (2d) 280 (App. D. C.), certiorari denied, No. 229, this Term, October 12, 1942. Thus Section 301 (a) authorizes the Commission to prescribe a system of accounts with which every licensee is required to comply.<sup>3</sup> And the same section also

<sup>3</sup> Section 4 (b) of the Act requires that upon completion of a licensed project the licensee shall file with the Commission a statement, under oath, "showing the actual legitimate original cost of construction of such project, addition, or betterment, and of the price paid for water rights, rights-of-way, lands, or interest in lands," and authorizes the Com-

provides explicitly that "nothing in this Act shall relieve any public utility from keeping any accounts \* \* \* which such public utility may be required to keep by or under authority of the laws of any State." *Cf.* also Section 302 (b). The corrective accounting prescribed by the Commission in no way infringes on state authority since "each

mission "to determine the actual legitimate original cost of and the net investment in" such project. Section 3 (13) defines "net investment" in a project as the actual legitimate original cost thereof, plus cost of additions and betterments and less certain deductions not here involved.

The effectuation of many of the purposes of the Act depends on the licensee's accounts correctly reflecting the Commission's determination of actual legitimate original cost. Thus, for example, actual legitimate cost is the basis upon which excessive profits are determined and expropriated. During the first twenty years the license is in force such profits may be expropriated to the Government under Section 10 (e) of the Act by increasing the annual charges paid by the licensee. After the first twenty years of operation excessive profits are segregated in an amortization reserve under Section 10 (d) for use in reduction of the licensee's net investment in the project. Actual legitimate original cost also constitutes the rate base used by the Commission in fixing intrastate rates (under Section 19) which are not regulated by the states and in regulating interstate rates (under Section 20). Actual legitimate original cost likewise controls the "just and fair compensation" paid a licensee under Section 16 for use of its project in a war or other emergency "involving the safety of the United States." The amount allowed by the Commission as actual legitimate original cost determines the price the Government pays a licensee upon acquisition of its project at the expiration of the license under Section 14 or upon a court sale of the project, following a revocation of the license under Section

commission is empowered to act within its own field." *Northern States Power Co. v. Federal Power Commission*, 118 F. (2d) 141, 144 (C. C. A. 7); *Northwestern Electric Co. v. Federal Power Commission*, 125 F. (2d) 882, 885 (C. C. A. 9); *Alabama Power Co. v. Federal Power Commission*, 128 F. (2d) 280 (App. D. C.), certiorari denied, No. 229, this Term, October 12, 1942; see S. Rep. No. 621, 74th Cong., 1st sess., p. 53. As the court below pointed out (3 R. 1469), the Act "discloses a purpose that the Commission shall prescribe such accounting system, notwithstanding that the state has required a like or a different system of accounts." And, as was pointed out in *Alabama Power Co. v. Federal Power Commission*, *supra*, the state can require petitioner to keep a separate set of books for purposes of

---

26. *United States v. Appalachian Electric Power Co.*, 311 U. S. 377, 427-428; *Clarion River Power Co. v. Smith*, 59 F. (2d) 861 (App. D. C.), certiorari denied, 287 U. S. 639.

Any accounting disposition of the disallowed items which would not eliminate them from the company's accounts would run counter to the objectives of the Act. As the court below recognized, the elimination of "items found not to constitute real assets \* \* \* is the necessary implication of the Act" (3 R. 1470). And similar Commission orders issued under Section 301 requiring the disallowed items to be charged to surplus have been uniformly upheld. *Alabama Power Co. v. McNinch*, 94 F. (2d) 601 (App. D. C.); *Northern States Power Co. v. Federal Power Commission*, *supra*; *Alabama Power Co. v. Federal Power Commission*, *supra*; compare *Kansas City So. Ry. Co. v. United States*, 231 U. S. 423, 440; *Norfolk & Western Ry. Co. v. United States*, 287 U. S. 134, 141.

state law and if the company chooses it may keep a third set for its own purposes.

Petitioner's reference to Section 201 (a) of Part II of the Federal Power Act which provides for federal regulation of the transmission and sale at wholesale of electric energy in interstate commerce, "such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States," is obviously irrelevant. Section 201 (a) deals with regulation of electric utilities engaged in interstate commerce under Part II of the Federal Power Act and has no application to the Commission's jurisdiction over hydroelectric projects licensed under Part I. Every court that has considered similar orders of the Commission has upheld the Commission's jurisdiction to prescribe the accounting disposition of the disallowed items of claimed cost. *Alabama Power Co. v. McNinch*, 94 F. (2d) 601, 604 (App. D. C.); *Northern States Power Co. v. Federal Power Commission*, 118 F. (2d) 141 (C. C. A. 7); *Alabama Power Co. v. Federal Power Commission*, 128 F. (2d) 280 (App. D. C.), certiorari denied, No. 229, this Term, October 12, 1942.

Petitioner's contention (Pet. 47-50) that, despite the extended proceedings in this case, the order requiring disposition of the disallowed amounts was entered without notice and hearing is without merit. Before entering such order,

the Commission gave petitioner full opportunity to show cause why the accounting requirements should not be made effective (2 R. 1270-1272). Petitioner thereupon filed a detailed response (2 R. 1279-1292) setting forth numerous legal arguments, but offering no accounting or other testimony. A further hearing was neither requested nor suggested. "It must be assumed that the response was as full and complete as it [petitioner] considered possible or appropriate" (3 R. 1471). The order to show cause was clearly sufficient. *Alabama Power Co. v. Federal Power Commission*, 128 F. (2d) 280 (App. D. C.), certiorari denied, No. 229, this Term, October 12, 1942; see also *Northwestern Electric Co. v. Federal Power Commission*, 125 F. (2d) 882 (C. C. A. 9).<sup>4</sup>

2. The court below properly dismissed the petition for review insofar as it sought to put in issue the propriety of the Commission's determination of actual legitimate original cost in its 1933 and 1937 orders. Section 313 (a) of the Federal Power Act precludes review of the Commission order unless application was made for a rehearing before the Commission and Section 313 (b) limits the time for review to sixty days following the order entered on the application for rehearing. It is undisputed that no timely court review was sought of the 1933 order as amended

---

<sup>4</sup> "The Fifth Amendment guarantees no particular form of procedure." *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 351.

by the 1937 order and that no petition for rehearing of the 1937 order was made before the Commission. In those circumstances, petitioner is foreclosed from questioning the amount of actual legitimate original cost as determined by the Commission in those orders. *Cf. Ostler Candy Co. v. Federal Trade Commission*, 106 F. (2d) 962, 964 (C. C. A. 10), certiorari denied, 309 U. S. 675, and compare *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381; *Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 75-78; *Stoll v. Gottlieb*, 305 U. S. 165; *American Surety Co. v. Baldwin*, 287 U. S. 156, 166. Petitioner's contention that its failure to seek court review of the 1933 order as amended by the 1937 order<sup>5</sup> was excusable because they were not reviewable orders is clearly incorrect.<sup>6</sup> These

---

<sup>5</sup> The 1933 order did not become effective, because of the pendency of petitions for rehearing, until after it was modified by the 1937 order, following rehearing. There is therefore no question here as to the reviewability of the 1933 order except as modified by the 1937 order.

<sup>6</sup> In contending that the 1933 order as amended by the 1937 order was properly before the court below, counsel for petitioner asserts that the failure to seek review is attributable to the fact he advised petitioner in 1937 that the orders were not reviewable, and that such advice was confirmed by arguments which Commission counsel had made on preliminary motions in other cases (Pet. 37-46). Whether or not the 1933 and 1937 orders were in fact reviewable is, of course, a question the resolution of which is not affected by the contentions earlier made by Commission counsel in other cases. Compare *The Whiskey Cases*, 99 U. S. 594; *Buie v. United States*, 76 F. (2d) 848 (C. C. A. 5), certiorari denied, 296 U. S. 585, rehearing denied, 296 U. S. 662. And the fact that



orders differ significantly from that involved in *United States v. Los Angeles R. R.*, 273 U. S. 299, 309-310, which did "not command \* \* \* [petitioner] to do, or to refrain from doing, anything." Here petitioner was expressly required to "establish and maintain control ledger sheets or accounts with reference to said project showing a total debit balance in its fixed capital accounts" of the amount found as the actual legitimate original cost and "to establish subsidiary ledger sheets or accounts or records, showing and substantiating all entries in such control account, and classifying the total for fixed capital in appropriate detail and in accordance with the Commission's rules and regulations" (2 R. 1004-1005). And penal sanctions might be invoked if petitioner failed to comply with the orders. *Cf.* Sections 304 (b) and 316. *Cf. Shields v. Utah Idaho R. Co.*, 305 U. S. 177, 183. Accordingly, these orders were clearly reviewable. Compare *Rochester Telephone Corp. v. United States*, 307 U. S. 125; see also *Columbia Broadcasting System, Inc. v. United States*, 316 U. S. 407.

---

petitioner was advised that those orders were not reviewable is similarly of no assistance in resolving the question whether in fact they were reviewable. Moreover, it must be noted in passing that the extent of the advice which petitioner received on this question and the identity of its advisor (Pet. 37-46) are somewhat obscured when the record here presented (3 R. 1473-1476) is contrasted with counsel's affidavit on requesting an extension of time before the Federal Power Commission (2 R. 1276; see also 2 R. 1273-1274).

Indeed, prior to the 1935 amendments adding the present review provisions to the Act,<sup>7</sup> identical orders of the Commission had been reviewed by the courts in suits for injunction to restrain their enforcement. *Alabama Power Co. v. Smith*, 10 P. U. R. (N. S.) 275 (S. C. D. C.); *Alabama Power Co. v. McNinch*, 94 F. (2d) 601 (App. D. C.); see also *Clarion River Power Co. v. Smith*, 59 F. (2d) 861 (App. D. C.), certiorari denied, 287 U. S. 639.

#### CONCLUSION

The decision below is correct. There is no conflict, and the case presents no question calling for further review. It is therefore respectfully submitted that the petition for a writ of certiorari be denied.



CHARLES FAHY,  
*Solicitor General.*

FRANCIS M. SHEA,  
*Assistant Attorney General.*

DAVID L. KREEGER,  
ELLIS LYONS,  
*Attorneys.*

CHARLES V. SHANNON,  
*Acting General Counsel,*

HOWARD E. WAHREN BROCK,  
*Attorney, Federal Power Commission,*

JANUARY 1943.

---

<sup>7</sup> By Title II of the Public Utility Act of 1935 (49 Stat. 838) the Federal Water Power Act of 1920, as amended, was made Part I of the Federal Power Act.





## APPENDIX

FEDERAL POWER ACT OF 1935, 49 STAT. 838

Section 3 (13) (16 U. S. C. sec. 796 (13)):

(13) "net investment" in a project means the actual legitimate original cost thereof as defined and interpreted in the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission," plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, ~~if~~ and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term "costs" shall include, insofar as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by States, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall insofar as applicable be published and promulgated as a part of the rules and regulations of the Commission.

Section 4 (b) (16 U. S. C. sec. 797 (b)) authorizes and empowers the Commission—

(b) To determine the actual legitimate original cost of and the net investment in a licensed project, and to aid the Commission in such determinations, each licensee shall, upon oath, within a reasonable period of time to be fixed by the Commission, after the construction of the original project or any addition thereto or betterment thereof, file with the Commission in such detail as the Commission may require, a statement in duplicate showing the actual legitimate original cost of construction of such project, addition, or betterment, and of the price paid for water rights, rights-of-way, lands, or interest in lands. The licensee shall grant to the Commission or to its duly authorized agent or agents, at all reasonable times, free access to such project, addition, or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records, and all other papers and documents relating thereto. The statement of actual legitimate original cost of said project, and revisions thereof as determined by the Commission, shall be filed with the Secretary of the Treasury.

Section 8 of Part I (16 U. S. C. sec. 801), formerly Section 8 of the Federal Water Power Act of 1920, 41 Stat. 1068:

SEC. 8. That no voluntary transfer of any license, or of the rights thereunder granted, shall be made without the written approval of the commission; and any successor or assign of the rights of such licensee, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be sub-

ject to all the conditions of the license under which such rights are held by such licensee and also subject to all the provisions and conditions of this Act to the same extent as though such successor or assign were the original licensee hereunder: *Provided*, That a mortgage or trust deed or judicial sales made thereunder or under tax sales shall not be deemed voluntary transfers within the meaning of this section.

Section 10 (d) and (e) (16 U. S. C., secs. 803 (d) (e)):

(d) That after the first twenty years of operation, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the net investment of a licensee in any project or projects under license, the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license.

(e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of the Part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or un-

til the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require; \* \* \*

Section 14 (16 U. S. C., sec. 807):

SEC. 14. Upon not less than two years' notice in writing from the Commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the licensee then valuable and serviceable in the development, transmission, or distribution of power and which is then dependent for its usefulness upon the continuance of the license, together with any lock or locks or other aids to navigation constructed at the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken, and shall assume all contracts entered into by the licensee with the approval of the Commission. The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be deter-



mined by the Commission after notice and opportunity for hearing. Such net investment shall not include or be affected by the value of any lands, rights-of-way, or other property of the United States licensed by the Commission under this Act, by the license or by good will, going value, or prospective revenues; nor shall the values allowed for water rights, rights-of-way, lands, or interest in lands be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee: *Provided*, That the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon payment of just compensation is hereby expressly reserved.

Section 20 of Part I (16 U. S. C. sec. 813), formerly Section 20 of the Federal Water Power Act of 1920 (41 Stat. 1073):

SEC. 20. \* \* \*

\* \* \* \* \*

In any valuation of the property of any licensee hereunder for purposes of rate making, no value shall be claimed by the licensee or allowed by the commission for any project or projects under license in excess of the value or values prescribed in section 14 hereof for the purposes of purchase by the United States, but there shall be included the cost to such licensee of the construction of the lock or locks or other aids of navigation and all other capital expenditures required by the United States, and no value shall be claimed or allowed for the rights granted by the commission or by this Act.

## Section 201 (a) (16 U. S. C. sec. 824):

SECTION. 201. (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

## Section 301 (a) (16 U. S. C. sec. 825):

SECTION 301. (a) Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may clas-

sify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

Section 302 (b) (18 U. S. C., § 825a):

(b) The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation rates, shall notify each State commission having jurisdiction with respect to any public utility involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

Section 304 (b) (18 U. S. C., § 825c):

(b) It shall be unlawful for any person, willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed, or kept under this chapter or any rule, regulation, or order thereunder.

Section 316 (18 U. S. C., § 825o):

(a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or